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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,957	08/18/2003	Ian Beverly	07012-0100 33,002	4194
4157	7590	02/26/2007		
ALAN RUDERMAN MILLER AND MARTIN 1000 VOLUNTEER BUILDING 832 GEORGIA AVENUE CHATTANOOGA, TN 374022289			EXAMINER IZAGUIRRE, ISMAEL	
			ART UNIT	PAPER NUMBER
			3765	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

**Office Action Summary**

Application No.

10/642,957

Applicant(s)

BEVERLY, IAN

Examiner

Ismael Izaguirre

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 9 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 8, 10, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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## **DETAILED ACTION**

### ***CLAIMS***

#### ***Summary***

Claim 1 is the independent claim under consideration in this Office Action.

Claims 2-15 are the dependent claims under consideration in this Office Action.

#### ***Claim Rejections - 35 U.S.C. § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 2,4,6,9 and 12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 2, line 2, A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). In the present instance, the claim includes extensions of 30% and 50%, with 50% being the preferred amount. It is unclear if the scope of the claim is intended to encompass the preferred amount or the other or only the other or both amounts.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Broadrick (3,152,563).

Broadrick discloses the invention substantially as claimed. Broadrick teaches a tufting machine including a plurality of aligned needles 15 arranged to be driven by a needle bar 12 up and down and which cooperate with a hook 23 below a needle plate. The hook picks up the yarns, which are fed to and through the backing F and there is further provided a divider plate on each hook. The divider plate divides tufts from each other with respect to the adjacent needle and yarns and extends 20,30 and up to 50% of the distance between the backing material and the hook (note figure 3). However, Broadrick does not specifically suggest the hook as being at least 50 mm below the backing material.

It would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to construct the spacing between the backing material and the point where the tufts are formed by the hooks as including at least 50 mm. Providing such a distance would allow shag carpet to be formed by

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the tufting machine. Providing long luxurious tufts would enhance the desirability of the product.

Claims 1-4 and 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Franks et al. (4,029,029).

Frank et al. disclose the invention substantially as claimed. Frank et al. teaches a tufting machine including a plurality of aligned needles 64 arranged to be driven by up and down and which cooperate with a hook 18 below a needle plate 60. The hook picks up the yarns, which are fed to and through the backing 58 and there is further provided a divider plate 22, 24 on each hook. The divider plate divides tufts from each other with respect to the adjacent needle and yarns and extends 20,30,50 and up to 80% of the distance between the backing material and the hook. However, Frank et al. does not specifically suggest the hook as being at least 50 mm below the backing material.

It would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to construct the spacing between the backing material and the point where the tufts are formed by the hooks as including at least 50 mm. Providing such a distance would allow shag carpet to be formed by the tufting machine. Providing long luxurious tufts would enhance the desirability of the product.

#### ***ALLOWABLE SUBJECT MATTER***

Claims 6 and 9 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

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Claims 5,7,8,10,14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Drawings***

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***PERTINENT CITATIONS***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. MacIsaac, Jr. et al. Illustrates pile formers for supporting tufts being bound to a backing. Smith illustrates upstanding vanes between the needles for dividing tufts. Caylor et al. Illustrate a needle plate. Hoeselbarth illustrates a loop catcher for loops with different heights. Watkins illustrates fingers at the needle plate supporting the backing material. Piller illustrates a spacer placed between the backing 3 and the hook 26 for dividing tufts from adjacent needles. Zafiroglu et al. Illustrate sinker fingers for supporting tufts of yarn while a backing is being tufted.


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### ***INQUIRIES***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Izaguirre whose telephone number is (571) 272-4987. The examiner can normally be reached on M-F (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Ismael Izaguirre  
Primary Examiner  
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